



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS 78711**

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May 20, 1977

Honorable A. M. Aikin, Jr. Chairman Senate Committee on Finance Senate of the State of Texas Austin, Texas	Letter Advisory No. 144  Re: Appropriation of state funds to the City of Big Spring to aid its economic recovery, and related questions.
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Dear Senator Aikin:

As Chairman of the Senate Committee on Finance you advise that due to the recent closing of Webb Air Force Base in the City of Big Spring, legislation is being contemplated which would authorize the expenditure of state money to assist in the economic recovery of the city. Legislative concern for this problem stems from the economic impact which the closing will have on the welfare of the Big Spring area and the consequent effect on state revenues from that area.

You ask three questions:

1. Does Article XVI, Section 6 of the Texas Constitution prevent the appropriation of state money to aid in the economic recovery of the City of Big Spring?
2. Would the fact that this appropriation would be made to the City of Big Spring, or Howard County, or a regional council of governments, or any other local governmental entity, affect the answer to inquiry Number 1?
3. Does the involuntary closing of Webb Air Force Base in the City of Big Spring constitute a "public calamity" under Article III, Section 51 of the Texas Constitution so as not to prevent appropriation of state money to aid in the economic recovery of this city?

We have not been furnished a proposed bill and, thus, our answers must be somewhat general. The pertinent part of article 16, section 6(a) of the constitution reads:

No appropriation for private or individual purposes shall be made, unless authorized by this Constitution.

In State v. City of Austin, 331 S.W.2d 737, 742 (Tex. 1960) the supreme court said the purpose of both this section and section 51 of article 3 of the constitution "is to prevent the application of public funds to private purposes; in other words, to prevent the gratuitous grant of such funds to any individual or corporation whatsoever." The case of Road District No. 4, Shelby County v. Allred, 68 S.W.2d 164 (Tex. 1934) suggests the section is designed to reinforce the article 3, section 56 constitutional inhibition against enactment of local or special laws. Also see the interpretive commentary following article 16, section 6 in Vernon's Annotated Constitution of the State of Texas.

The pertinent portion of article 3, section 51 reads:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individuals, municipal or other corporations whatsoever; . . . provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.

(Emphasis added).

Generally, in the absence of a public calamity the legislature has no authority to donate state money to any municipal corporation or local governmental entity unless a state governmental purpose, as opposed to a local purpose, is properly served thereby. Road District No. 4, Shelby County v. Allred, supra. In the Shelby County case the legislature had sought to give help to a road district which had suffered a very great financial loss because of an embezzlement by one of its officers. The state aid was not tied to the discharge of any state governmental function by the district. In holding the attempt unconstitutional, the court observed:

There is certainly a vast difference between a case where public money is granted to a municipal or political corporation on condition that it assume the unqualified burden and duty of using it for a governmental function and a case like this, where the grant of public money is made under such circumstances that not one cent of it can ever be used in performing governmental function.

Id. at 171.

The court contrasted the road district situation with that involved in City of Aransas Pass v. Keeling, 247 S.W. 818 (Tex. 1923) where the legislature assisted Aransas Pass in building sea-walls and other protective structures. The court quoted from the earlier case:

"The destruction of ports, through which moves the commerce of the state, is a state-wide calamity. Hence sea walls and breakwaters on the Gulf coast, though of special benefit to particular communities, must be regarded as promoting the general welfare and prosperity of the state. . . . [T]he state, in promoting the welfare, advancement, and prosperity of all her citizens, or in aiding to avert injury to her entire citizenship, cannot be regarded otherwise than as performing a proper function of state government."

Road District No. 4, Shelby County v. Allred, supra at 170.

The Texas constitution does not forbid the expenditure of public funds for the direct accomplishment of a proper public purpose, even if individuals or corporations are indirectly benefited thereby. Barrington v. Cokinos, 338 S.W.2d 133 (Tex. 1960). And it does not limit the use of state funds to those functions of the state government itself whereby it directly performs an essential service for all members of the public. Bullock v. Calvert, 480 S.W.2d 367 (Tex. 1972). But not every expenditure of public funds benefiting some

segment of the public is legitimate. County funds must be spent for the benefit of the county, not for the benefit of some other governmental entity. Harris County Flood Control District v. Mann, 140 S.W.2d 1098 (Tex. 1940). Municipal funds must be spent for the benefit of the municipality, not for some other unit of government. San Antonio Ind. School District v. Board of Trustees of San Antonio Electric & Gas System, 204 S.W.2d 22 (Tex. Civ. App. -- El Paso 1947, writ ref'd n.r.e.). Similarly, the use of state money to pay claims predicated on facts which generate no state liability or satisfy no state obligation constitute a prohibited gift or donation. State v. City of Austin, *supra*; Road District No. 4, Shelby County v. Allred, *supra*. Cf. Bexar County Hospital District v. Crosby, 327 S.W.2d 445 (Tex. 1959).

The alleviation of a genuine public calamity or the averting of one can certainly qualify as a proper public purpose for the expenditure of state funds, but the discretion of the legislature to determine that a public calamity exists or impends may not be entirely unbridled. In State v. Angelina County, 150 S.W.2d 379 (Tex. 1941) the supreme court refused to treat as a "public calamity" within the meaning of article 3, section 51, the severe economic distress of Angelina County caused by large federal purchases of land in the county which removed the land from tax rolls. The court said:

Public calamities heretofore recognized by this Court as such within the meaning of this section of the constitution have been due to occurrences involuntary in their nature, so far as the localities upon which they were visited were concerned.

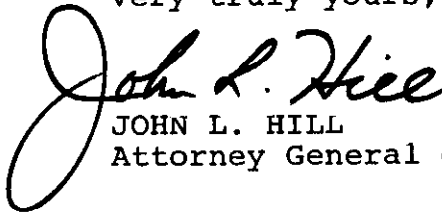
Id. at 383. The determination that a "public purpose" exists to support legislation is for the court in the last analysis. Davis v. City of Lubbock, 326 S.W.2d 699 (Tex. 1959).

In answer to your first question, it is our opinion that article 16, section 6 of the Texas constitution prevents the appropriation of state money to aid in the economic recovery of Big Spring unless: (1) the money is appropriated pursuant to a general law adopted in furtherance of a public purpose to benefit the entire state, or (2) the legislature properly finds that the Big Spring situation constitutes a

public calamity within the meaning of article 3, section 51 of the constitution. With regard to general laws, see Smith v. Davis, 426 S.W.2d 827 (Tex. 1968); County of Cameron v. Wilson, 326 S.W.2d 162 (Tex. 1959); Attorney General Opinion H-119 (1973).

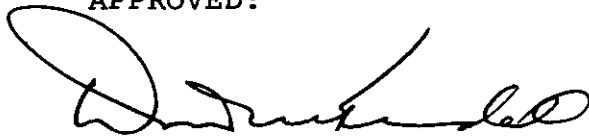
While the ultimate determination would depend on the facts and on the findings of the legislature, we believe there is a strong probability that the court would find that this situation is not the type of public calamity contemplated by article 3, section 51. Also, before any bill could be upheld under the doctrine involving benefit to the entire state, the specific evidence involving a specific bill would have to be analyzed.

Very truly yours,

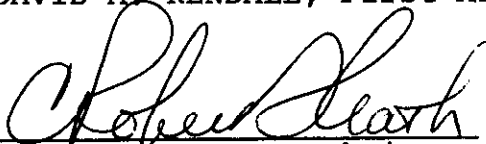


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